

## **CHAPTER 8 BUSINESS REGULATIONS**

### **ARTICLE 8-1 PEDDLERS AND SOLICITORS (Ordinance 94-07); (Ordinance 03-09)**

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#### **Section 8-1-1 Purpose**

The city council desires to regulate peddling and solicitation within the city in a manner so as to ensure to the residents the maximum amount of privacy and security in their own homes that is permissible in light of court decisions mandating certain types and amounts of access to residential areas by peddlers and solicitors. It is, therefore, the intent of the city council in enacting this article to recognize the extensive single-family residential nature of the city and the city's unique geography and topography, resulting in narrow unlit streets, while providing opportunity for peddlers and solicitors as mandated by law. This Article should be interpreted so as to be in conformity with relevant state and federal court decisions including but not limited to Watchtower Bible and Tract Society of New York, Inc., v. Village of Stratton, 536 U.S. 150, 122 S. Ct. 2080, 153 L. Ed. 2d 205 (2002)

#### **Section 8-1-2 Definitions**

For the purposes of this article only, the following terms shall have the following meanings:

- A. "Canvasser" is a person who attempts to make personal contact with a resident at his/her residence without prior specific invitation or appointment from the resident, for the primary purpose of (1) attempting to enlist support for or against a particular religion, philosophy, ideology, political party, issue or candidate, even if incidental to such purpose the canvasser accepts the donation of money for or against such cause, or (2) distributing a handbill or flyer advertising a non-commercial event or service.

- B. "Commercial" shall mean and include the sale of services, goods, wares and merchandise for monetary compensation, consideration or profit, whether or not a profit is made, and not for any charitable purpose.
- C. "Contribution" shall mean and include alms, food (except seasonal handouts of candy or other snack-type food items), clothing, money, property, subscriptions, pledges or donations given or solicited, either directly or indirectly, or under the guise of loans of money or property.
- D. "Identification card" shall mean a solicitor identification card in accordance with Section 8-1-7.
- E. "Peddler" is a person who attempts to make personal contact with a resident at his/her residence without prior specific invitation or appointment from the resident, for the primary purpose of attempting to sell a good or service. A "peddler" does NOT include a person who distributes handbills or flyers for a commercial purpose, advertising an event, activity, good or service that is offered to the resident for purchase at a location away from the residence or at a time different from the time of visit. Such a person is a "solicitor."
- F. "Solicitor" is a person who attempts to make personal contact with a resident at his/her residence without prior specific invitation or appointment from the resident, for the primary purpose of (1) attempting to obtain a donation to a particular patriotic, philanthropic, social service, welfare, benevolent, educational, civic, fraternal, charitable, political or religious purpose, even if incidental to such purpose there is the sale of some good or service, or (2) distributing a handbill or flyer advertising a commercial event or service.
- G. "Supervision" shall mean the following:
  - 1. An adult supervisor within a one-quarter mile of each individual solicitor under the age of sixteen;
  - 2. No more than five individual solicitors under the age of sixteen assigned to each adult supervisor; and
  - 3. Contact by such supervisor with each solicitor under the age of sixteen at least once every two-hour period that the child is soliciting.
- H. "Writing" shall include printing, typewriting, mimeographing, multi-graphing or photocopying.
- I. "Written" shall include printed, typewritten, mimeographed, multi-graphed or photocopied.

### **Section 8-1-3            Permit Requirements**

- A.     No person shall act as a peddler or as a solicitor within the city limits without first obtaining a permit and Identification Card in accordance with this ordinance. A canvasser is not required to have a permit or Identification Card but any canvasser wanting an Identification Card for the purpose of reassuring city residents of the canvasser's good faith shall be issued one upon request.
- B.     No person shall solicit for commercial purposes within the city without first acquiring the necessary Transaction Privilege and Use Tax Identification Number, if applicable.

### **Section 8-1-4            Exemptions**

- A.     On Premise Solicitations. The provisions of this article shall not apply to solicitations made upon premises owned or occupied by the organization or     person on whose behalf such solicitation is made.
- B.     Additional Exemptions. The provisions of this article shall not apply to:
  - 1.       Payments required by law to be collected or paid; or
  - 2.       Payments to or from governmental agencies; or
  - 3.       A public utility employee in the performance of his/her duty for his/her employer.
  - 4.       Solicitations made by an association or its authorized agents and employees to its own members and employees.

### **Section 8-1-5            Application Procedure**

- A.     Filing An Application. An application for a permit for solicitation shall be filed with the city clerk, and the clerk shall, in conformance with the standards set forth in this article, either grant or deny the requested permit two business days of the date the application is made. In the event the clerk fails to act upon an application within the time prescribed herein, the permit shall be deemed granted.
- B.     Contents of Application. An application for a permit shall include but not be     limited to the following information:
  - 1.       If the applicant is not an individual, the applicant's correct business or organization name, tax identification number (if applicable) and address of its principal office.
  - 2.       The name, address and telephone number of the person or persons who will be in direct charge of conducting the permitted activity.

3. The name, physical description and photograph of each person for which a permit is requested. In lieu of this information, a driver's license, state identification card, passport, or other government-issued identification card (issued by a government of the United States) containing this information may be provided, and a photocopy taken.
4. Date and place of birth for each person for whom a permit is requested and (if available) the social security number of such person.
5. A list of all infractions, offenses, misdemeanor and felony convictions of each person for whom a permit is requested for the seven years immediately prior to the application.
6. The motor vehicle make, model, year, color and state license plate number of any vehicle which will be used by each person for whom a permit is requested.
7. A description of the method or methods to be used in conducting the solicitation.
8. If a permit is requested for a peddler:
  - a. The name and permanent address of the business offering the event, activity, good or service (i.e. the peddler's principal).
  - b. A copy of the principal's sales tax license as issued by the State of Arizona.
  - c. The location where books and records are kept of sales which occur within the city and which are available for city inspection to determine that all city sales taxes have been paid.
9. If a permit is requested for a solicitor:
  - a. The name and permanent address of the organization, person, or group for whom donations (or proceeds) are accepted.
  - b. The web address for this organization, person, or group (or other address) where residents having subsequent questions can go for more information.
10. Any other information the applicant wishes to provide, perhaps including copies of literature to be distributed, references to other municipalities where similar activities have occurred, etc.
11. The time when such solicitation will be made, giving the intended dates and the hours of day for the commencement and termination of the solicitation.
12. A statement to the effect that, if a permit is granted, it will not be used or represented in any manner as an endorsement by the city or by any department or officer thereof.

13. The signature of the applicant if the applicant is an individual, or the managing general partner if the applicant is a partnership, or an officer if the applicant is a corporation or other type of organization.
- C. Change in Information. If, while any application is pending, or during the term of any permit granted hereunder, there is any change in fact, policy or method that would alter the information set forth in the application, the applicant shall notify the city clerk in writing thereof within twenty-four hours after such change.

#### **Section 8-1-6            Permitting Procedure**

- A. Issuance of Permit. The city clerk shall issue a permit for solicitation unless any of the following have been demonstrated:
1. That the applicant has failed to provide information required pursuant to this article.
  2. That any statement made in the application is false.
  3. That the applicant or any individual agent or solicitor has been convicted of a felony or a misdemeanor involving moral turpitude, disorderly conduct or a violation of this article within the past seven years.
  4. That the applicant has not provided a tax identification number, if applicable.
- B. Authority of the City Clerk. Nothing in this article shall be construed as granting to the city clerk, or to any other person, the authority to grant, deny, revoke, renew or suspend any permit by reason of either approval or disapproval of the philosophy, opinions or beliefs of the applicant, the permittee, or the person such applicant or permittee represents, or for any other reasons not specifically set forth in this article.
- C. Investigation. During the period of time following submission of the application for one or more identification cards and its issuance, the city clerk, with the assistance of the Sedona Police Department, if necessary, shall investigate as to the truth and accuracy of the information contained in the application. If the city has not completed the investigation within the proscribed time, the identification card will nonetheless be issued, subject, however, to administrative revocation upon completion of the investigation.
- D. Form of Permit. Permits issued under this article shall bear the name and address of the person to whom the permit is issued, the number of the permit, dates within which the permittee may solicit, a statement that the permit does not constitute an endorsement by the city or any of its departments, officers or employees of the purpose, or of the person conducting the solicitation. All permits must be signed by the city clerk.

- E. Term of Permits. All permits issued under this article shall be valid for one year from the date approved unless revoked or suspended pursuant to the provisions of this article. If any additional solicitation is proposed within the one year permit term, but the original solicitation dates have expired, the permit holder need only file a statement including its name, the original permit number, the new dates of solicitation, and the names of all individual agents or solicitors connected with, or to be connected with the proposed solicitation, and identification of those named solicitors under the age of 16.
- F. Permit Non-Transferable. No permit issued under this article is transferable or assignable.

#### **Section 8-1-7 Identification Card**

- A. Contents of Identification Card. The city clerk shall provide to all individual agents and solicitors for each permit holder identification cards which shall include the permit number; the individual agent or solicitor's name; the name of the individual, organization or business directing the solicitation and name of the permit holder, if different; the time period during which the solicitation is authorized; and a statement providing that the identification card is not an endorsement of the solicitation by the city or any of its departments, officers or employees. Upon request by the permit holder, the city clerk may omit the name of any individual solicitor under the age of eighteen from the identification card only.
- B. Card to be Carried and Displayed. No person shall solicit unless the required identification card is exhibited and presented for review by the person solicited, before accepting any contribution or making any commercial transaction.

#### **Section 8-1-8 Denial of Permit**

In the event that the city clerk denies a permit, the clerk shall notify the applicant by certified mail within the two day processing period, stating with specificity the reasons for such denial.

#### **Section 8-1-9 Revocation of Permit**

- A. Grounds for Revocation. A permit shall be revoked if the permit holder or any individual soliciting on behalf of the permit holder:
1. Violates any of the provisions of this code or any city ordinance, or commits any other criminal act while engaging in the permitted activity or misrepresents to a person being solicited the purpose of the solicitation.
  2. Commits any fraud, misrepresentation or incorrect statement in the course of carrying on the activity.

3. Is later found to have been convicted of any felony or misdemeanor involving moral turpitude within the last seven years.
  4. Conducts the activity in such a manner as to constitute a breach of the peace or a menace to the health, safety or general welfare or public.
- B. Notice-Suspension. Whenever it shall be shown that grounds for revocation exist, the city clerk shall suspend the permit by issuing to the permit holder a notice of suspension, stating with specificity the reasons for the suspension. Such notice shall be provided by certified mail or by personal service of the notice upon the permittee. The suspension shall become effective on the third calendar day after service by mail of the suspension notice, or immediately upon personal service of the notice. The revocation shall be final unless an appeal is successfully taken pursuant to Section 8-1-10.
- C. Notification to the Police Department. The police department shall be notified by the city clerk of the suspension, revocation, or reinstatement of any permit issued under this article and the effective date thereof.

#### **Section 8-1-10          Appeal**

If an applicant or permittee is aggrieved by any action to deny, suspend or revoke a permit by the city clerk, such applicant or permittee shall have the right to appeal such decision to the city manager. The notice of appeal shall specifically set forth the grounds for the appeal and shall be filed within seven calendar days after mailing or personal delivery of a notice of denial or revocation. The city manager shall hear the applicant/permittee or a designated representative, receive relevant information and documents, and act on the appeal within five calendar days of receiving the appeal. The city manager's decision shall be final.

#### **Section 8-1-11          Solicitation Procedures**

- A. General Requirements.
1. No person shall act as a peddler or solicitor except pursuant to a permit issued under this article, or without having in his possession an identification card as provided in Section 8-1-7.
  2. No person shall act as a peddler or solicitor within the city after the permit issued by the city has expired.
  3. No person shall act as a peddler solicitor or canvasser at any residence where there is a sign indicating "No Solicitations", "Do Not Disturb", or "No Trespassing", or otherwise indicating that the residents do not wish to be solicited or have their privacy disturbed.

4. No person shall touch, come into physical contact with or affix any object to another person without first receiving express permission therefore from such person.
  5. While soliciting, no person shall intentionally or deliberately obstruct the free movement of any person on any street, sidewalk or other place.
  6. No person shall threaten any injury or damage to any person who declines to be solicited.
  7. No person shall directly or indirectly solicit contributions from any person by misrepresentation of his or her name, occupation, physical or mental condition, financial condition, residence or principal place of business. No person shall make or cause to be made any misstatement of fact or misrepresentation in connection with any solicitation, or any application or report filed under this code.
  8. No charitable organization or professional fund raiser permitted to solicit for a charitable organization shall use statements or materials indicating such contributions are being raised for any individual or organization which has not given its written consent for the solicitation of such contribution.
  9. No person shall solicit in the city for any purpose other than the purposes specified in the application upon which the permit was issued.
  10. No person under the age of sixteen shall solicit within the city unless supervised, as defined in subsection H of Section 8-1-2, by an adult holding a permit.
- B. Hours of Solicitation. Unless an individual has been requested or invited by the owner or occupant, it shall be unlawful for any permit holder or registered individual solicitor to enter upon any residential premises for the purpose of solicitation earlier than 9:00 a.m. of any day or after 6:00 p.m. in the case of a solicitor over the age of sixteen, or after 5:00 p.m. in the case of a solicitor under the age of sixteen. This section shall not be interpreted to grant any person permission to enter upon private property.
- C. Written Receipts Required. Any solicitor receiving money or anything having a value of ten dollars or more from any person under a solicitation made pursuant to a permit issued hereunder shall give to such person a written receipt, signed by the solicitor, showing plainly the name and permit number of the person under whose permit the solicitation is conducted, and the date and the amount received; provided, however, that this requirement shall not apply to any contributions collected by means of a closed box or receptacle used for solicitation with the written approval of the city clerk where it is impractical to determine the amount of each such contribution.



## **Section 8-1-12 Penalties**

Any person who violates any provision of this article, or fails to comply with any provision of this article, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punishable as provided in Article 1-8 of this code.

## **Section 8-1-13 Severability**

It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses, phrases and words of this ordinance are severable, and if any section, paragraph, sentence, clause, phrase or word(s) of this ordinance shall be declared unconstitutional or otherwise invalid, such unconstitutionality or invalidity shall not affect any of the remaining sections, paragraphs, sentences, clauses, phrases and words of this Article.

## **ARTICLE 8-2 BUSINESS REGISTRATION (Created by O2005-13; Amended by O2005-18)**

- 8-2-1 Registration Required
- 8-2-2 Contents of Application Form
- 8-2-3 Issuance of Registration
- 8-2-4 Suspension, Revocation, or Denial of Registration
- 8-2-5 Definitions (**Added 12-13-05**)

### **Section 8-2-1 Registration Required**

- A. It is unlawful for any person to carry on business within the city without having procured registration from the city and complying with any and all regulations of such business specified in this chapter.
- B. A registration obtained under this section is not evidence or proof that the business has complied with the provisions of this chapter or other provisions of the Sedona City Code, nor shall the granting of a registration limit the prosecution by the city of any violations of law.

### **Section 8-2-2 Contents of Application Form (Amended 12-13-05)**

The application forms supplied by the city shall include, but not be limited to, the following questions:

- A. Business or trade name;
- B. Address of business headquarters;
- C. Location of business within the city;
- D. Business mailing address;

- E. Business owner;
- F. Applicant's name; street address;
- G. Business telephone number;
- H. Exact nature of business;
- I. Number of employees;

### **Section 8-2-3 Issuance of Registration**

- A. Application for a business shall be made to the City Clerk's office and shall be made on forms furnished by the city, either hardcopy or online via the City website. Every application shall be accompanied by an application fee, in the initial amount of \$25 for the first business and \$5.00 for each additional business. The form and contents may be modified by the City to better compile data for economic forecasting and emergency response.
- B. It shall be the duty of the City Clerk to prepare and to issue a registration under this chapter for every business, to state in each registration the period of time covered, the name of the person, and the location of the business establishment. Registrations are valid for a period of one (1) year after issuance. It will be the responsibility of the business to renew the registration within 30 days of expiration, and to contact the City Clerk in the event any of the information on the registration changes.
- C. No registration to conduct any business or occupation in the city, which is regulated and/or licensed under any provision of the Arizona Revised Statutes, shall be issued until and unless a state license has been obtained therefore. It shall be the duty of every applicant to furnish written proof of compliance with any applicable state licensing regulations to the administrator.
- D. No registration shall be issued until the appropriate fee has been paid. If all required information is supplied and it does not appear that any applicable state law or city ordinance will be violated by the operation of the business, the registration shall be issued.

### **Section 8-2-4 Suspension, Revocation, or Denial of Registration**

- A. A business registration issued under this section may be suspended or revoked at any time during the term of such registration, or the application may be denied if the administrator determines that a business registration or an employee of the registered business has:

1. Has failed to provide complete and accurate information on the applications required by this chapter;
  2. Has knowingly provided false information on the applications required by this chapter, including providing a false or assumed name, or impersonating another establishment of a like or different name;
- B. The provisions of this section are in addition to any grounds for denial, suspension or revocation set forth in other sections of the city code.

**Section 8-2-5 Definitions (Added December 13, 2005)**

- A. Business: All activities or acts, personal or corporate, engaged in and caused to be engaged in with the object of gain, benefit, or advantage, either direct or indirect, but not casual activities or sales.
- B. Casual Activity or Sale: A transaction of an isolated nature made by a person who neither represents himself to be nor is engaged in a business subject to a tax imposed by the City or State. However, no sale, rental, license for use, or lease transaction concerning real property nor any activity entered into by a business taxable shall be treated, or be exempt, as casual. This definition shall include sales of used capital assets, provided that the volume and frequency of such sales do not indicate that the seller regularly engages in selling such property.